Enra Engineering and Fabrication Sdn Bhd v Gemula Sdn Bhd and another case

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NOS WA-24C-222–10 OF 2018 AND WA-24C-239–10 OF 2018
LEE SWEE SENG J
22 MARCH 2019

Building and Construction Law — Adjudication decision — Application for enforcement of adjudication decision — Disputes between main contractor and subcontractor relating to payment for works done under subcontracts — Adjudicator decided that main contractor shall pay adjudicated amount to subcontractor — Application by subcontractor for enforcement of adjudication decision — Whether adjudicator acted within jurisdiction — Whether subcontracts were government construction contracts specified in First Schedule of Construction Industry Payment and Adjudication (Exemption) Order 2014 — Whether adjudicator acted independently or impartially in exercise of power — Whether there was denial of natural justice — Whether court ought to evaluate and assess facts and documents — Whether adjudication decision ought to be set aside — Construction Industry Payment and Adjudication Act 2012 ss 15, 28

This is in relation to two originating summonses for the High Court's decision, one filed by the successful claimant in an adjudication under s 28 of the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA') for the enforcement of the adjudication decision and another by the respondent in the adjudication seeking to set aside the decision. The contract was for the construction of a main vehicle 8 x 8 and team vehicle garage together with infrastructure at 10 mile camp in Kuantan, Pahang. Gemula Sdn Bhd ('the main contractor') appointed Enra Engineering ('the claimant') as the subcontractor by issuing two letters of award, dated 15 January 2016 and 9 March 2016 respectively. There were also further contractual documents entered into between the parties in two separate deed of assignment, where Jabatan Kerja Raya Pahang ('JKR') had consented that the main contractor shall do all that is necessary to ensure that payment has been made to the claimant. As the project progressed, disputes arose between the parties with respect to the payment for works done under the subcontract. The claimant had issued a payment claim to the respondent in relation to two letter of awards and claims relating to additional/variation works ancillary to the subcontracts. The respondent applied to set aside the adjudication decision principally on the ground that the adjudicator had exceeded his jurisdiction and that he had failed to exercise his powers independently and impartially. The respondent also alleges that there had been a denial of natural justice. The issues to be

A determined by the court were: (a) whether the construction contract between the claimant and the respondent was an exempt contract under the first schedule of the exemption order; (b) whether the government contract was an exempt contract falling within the First Schedule to the exemption order; (c) whether the adjudicator failed to act independently and impartially; B (d) whether the ground of a denial of natural justice in the adjudication was in reality a challenge of the merits of the adjudication decision; and (e) whether the application to enforce the adjudication decision should be allowed.

C **Held**, allowing application to enforce adjudication decision, dismissing application to set aside adjudication decision with costs:

(1) If the first contract in the pinnacle of the chain of contracts is an exempt contract within the First Schedule of the exemption order then the contracts down the chain should be similarly affected. It would not be fair D or reasonable if the main contractor cannot proceed against its employer because of the exemption but the subcontractor in the subcontract immediately below the first main contract may enjoy the benefits of adjudication. If the main contractor cannot avail itself of adjudication and its benefits of a quick resolution of its disputes and payments from its E employer and yet has to submit to adjudication brought by its subcontractor and pay pursuant to the adjudication decision, the main contractor would be in an enviable position where it has to pay out to its subcontractor even though its employer has not paid it. That could not be the intention of the Legislator and the Exemption Order had to be F read in a way as to promote its intention without causing undue hardship to any party up the chain of construction contracts where the ultimate party is the government as the employer with respect to the exempt construction contracts (see para 18).

(2) The court was not persuaded by the claimant that merely because neither G of the contracting parties are not the government, then invariably the construction contract in question cannot be an exempt contract even if ordinarily the contracts would be one by reference to the nature of the works as spelt out in the First Schedule to the Exemption Order. A far more important and relevant question would be whether the government H contract in question comes within the First Schedule to the Exemption Order. The subcontracts were not with respect to the construction of an army or military camp but a facility in the army or military camp. The question was whether that which was constructed related to national security or security related facilities. The construction was confined to the I construction of a garage and repair works related to it. The only nexus to a natural security or security related facilities was that the garage was built within a military camp. A garage is nothing more than a place to store and park motor vehicles. Such a nexus was not sufficient to bring the government contract within the exemption (see paras 21 & 24).

(3) The element of national security did not arise in any acute sense and there was no good reason why the contract in question should not be treated like any other contracts, involving a component of a building works where if the contractor was not paid, he should be permitted to avail itself of adjudication. The adjudicator was therefore within jurisdiction when he proceeded to adjudicate the payment claim as the government construction contract did not fall within the First Schedule of the Exemption Order (see paras 33 & 35).

(4) Whether or not the adjudicator should avail himself of any of the vast powers conferred on him, under s 25 of the CIPAA, was a matter best left to the adjudicator in the exercise of his discretion and the court would generally abstain from interfering or intervening in an application to set aside an adjudication decision. He may exercise any of the powers given to him from ss 25(a)–(p) of the CIPAA either alone or in combination with other powers. It was not mandatory for the adjudicator to exercise all of his powers provided under s 25 of the CIPAA. Pursuant to s 12(1) of the CIPAA, the adjudicator shall conduct the adjudication in the manner as the adjudicator considers appropriate within the powers provided under s 25 of the CIPAA (see paras 37–38).

(5) Both parties had submitted all the relevant supporting documents and relevant legal authorities in the adjudication proceedings of which the adjudicator had the opportunity to peruse and examine. The adjudicator relied on the relevant legal authorities in arriving at his decision which included his decision in allowing ENRA's claim and that the subcontracts were not government construction contracts exempted from the provisions of CIPAA. The adjudicator decided that it was not necessary to convene an oral hearing, meeting and/or site visit for this adjudication and more so when Gemula had not submitted any requests for the adjudicator to conduct a hearing, meeting and/or site visit during the course of the adjudication proceedings. The fact that the adjudicator decided against Gemula was no justification for arguing that the adjudicator had not acted independently or impartially. An allegation as serious as this must descend to some elements of particularity and not a matter of saying that, had he acted independently and impartially, his decision would have been different (see paras 39–42).

(6) Whether or not the variation works were valid was a finding of mixed fact and law of adjudicator. Natural justice does not mandate that the adjudicator must arrive at a decision in a particular way. So long as the adjudicator had heard both parties, he could not be faulted as having denied the party that he decided against natural justice when after all natural justice is procedural fairness in essence. The reasoning of the

adjudicator were both cogent and reasonable and certainly not a ground for setting aside his decision under the rubric of a denial of natural justice (see paras 55 & 63).

[Bahasa Malaysia summary

Tindakan ini berkaitan dengan dua saman pemula dari keputusan Mahkamah Tinggi, satu difailkan oleh penuntut berjaya dalam satu lagi adjudikasi di bawah s 28 Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012 ('Akta') untuk penguatkuasaan keputusan adjudikasi dan satu lagi oleh responden dalam adjudikasi yang menuntut untuk mengetepikan keputusan tersebut. Kontrak adalah untuk pembinaan satu garaj kenderaan utama 8 x 8 dan kenderaan pasukan bersama dengan infrastruktur di Kem Batu 10, di Kuantan Pahangan. Gemula Sdn Bhd ('kontraktor utama') melantik Enra Engineering ('penuntut') sebagai subkontraktor dengan mengeluarkan dua surat award, bertarikh 15 Januari 2016 dan 9 Mac 2016. Terdapat juga dokumen kontrak lanjut yang dimasuki antara pihak-pihak dalam dua surat ikatan penyerahhakkan, yang mana Jabatan Kerja Raya Pahang ('JKR') telah memberi izin kepada kontraktor utama untuk melakukan apa-apa yang perlu untuk memastikan pembayaran telah dibuat kepada penuntut. Sepanjang perjalanan projek tersebut, pertelingkahan wujud antara pihak-pihak berkaitan dengan pihak berkenaan dengan pembayaran untuk kerja yang dilakukan dibawah subkontrak. Penuntut telah mengeluarkan satu tuntutan pembayaran kepada responden berkenaan dengan dua surat award dan tuntutan berkenaan dengan kerja tambahan/variasi sampingan kepada subkontrak. Responden memohon untuk mengetepikan keputusan adjudikasi secara prinsipnya atas alasan bahawa pengadil telah melampaui bidangkuasanya dan telah gagal untuk menggunakan kuasanya secara adil dan tidak berat sebelah. Responden juga mengatakan bahawa wujud penafian keadilan asasi. Isu untuk diputuskan oleh mahkamah adalah sama ada: (a) sama ada kontrak pembinaan antara penuntut dan responden adalah kontrak berkecuali dibawah Jadual Pertama perintah pengecualian; (b) sama ada kontrak kerajaan adalah kontrak berkecuali dibawah Jadual Pertama perintah pengecualian; (c) sama ada pengadil gagal untuk bertindak secara adil dan tidak berkecuali; (d) sama ada alasan penafian keadilan asasi dalam adjudikasi adalah sebenarnya mencabar merit keputusan adjudikasi; dan (e) sama ada permohonan untuk menguatkuasakan keputusan adjudikasi harus dibenarkan.

Diputuskan, membenarkan pemohonan untuk menguatkuasakan keputusan adjudikasi, mengetepikan permohonan untuk mengetepikan keputusan adjudikasi dengan kos:

(1) Sekiranya kontrak pertama dalam rantaian kontrak adalah kontrak berkecuali dalam Jadual Pertama perintah pengecualian, makan kontrak lain di bawah rantaian tersebut juga menerima kesan yang sama. Adalah tidak adil dan munasabah sekiranya kontraktor utama tidak boleh

meneruskan tuntutan dengan majikannya kerana pengecualian tersebut akan tetapi subkontraktor dalam subkontrak yang berada secara terus di bawah kontrak utama pertama boleh menikmati kelebihan adjudikasi. Sekiranya kontraktor utama tidak dapat menyerahkan dirinya kepada adjudikasi dengan kelebihan penyelesaian pertelingkahan dan pembayaran daripada majikannya akan tetapi harus menyerahkan dirinya kepada adjudikasi yang dibawa oleh subkontraktornya dan membuat pembayaran selaras dengan keputusan adjudikasi, kontraktor utama berada dalam kedudukan yang merugikan yang mana ianya harus membayar subkontraktornya walaupun majikannya masih belum membayarnya. Ianya tidak mungkin menjadi niat penggubal undang-undang dan perintah pengecualian harus dibaca dengan cara untuk menyerlahkan niatnya tanpa menyebabkan kesusahan kepada mana-mana pihak dalam rantaian kontrak pembinaan yang mana pihak akhirnya adalah kerajaan sebagai majikan berkenaan dengan kontrak pembinaan berkecuali (lihat perenggan 18).

(2) Mahkamah tidak tertarik dengan hujahan penuntut, bahawa hanya kerana tiada pihak yang berada di dalam kerajaan, oleh itu, kontrak pembinaan yang dipersoalkan tidak boleh menjadi satu kontrak berkecuali, walaupun dalam kebiasaannya kontrak tersebut adalah satu yang merujuk sifat kerja yang tersenarai dalam Jadual Pertama kepada perintah berkecuali. Persoalan yang lebih penting dan relevan adalah sama ada kontrak kerajaan yang dipersoalkan terjumlah kepada apa yang dinyatakan dalam Jadual Pertama kepada perintah berkecuali. Subkontrak tidak berkaitan dengan pembinaan kem askar akan tetapi satu fasiliti dalam kem askar. Persoalan sama ada apa yang dibina berkaitan dengan keselamatan negara atau fasiliti berkaitan dengan keselamatan. Pembinaan tersebut terhad kepada pembinaan satu garaj dan kerja pembaikan berkaitan dengannya. Satu-satunya *nexus* dengan keselamatan negara adalah garaj tersebut dibina dalam kem askar. Garaj cuma merupakan satu tempat untuk menyimpan dan meletak kenderaan bermotor. *Nexus* sedemikian tidak memadai untuk membawanya sebagai satu kontrak yang termasuk dibawah pengecualian (lihat perenggan 21 & 24).

(3) Elemen keselamatan negara tidak timbul dalam apa-apa bentuk dan tiada sebab baik untuk kontrak yang dipersoalkan tidak harus dilayan seperti mana-mana kontrak lain, yang melibatkan komponen kerja pembinaan yang mana sekiranya kontraktor tidak dibayar, dia harus dibenarkan untuk menyerahkan dirinya kepada adjudikasi. Pengadil tersebut berada dalam bidangkuasanya apabila dia mengadili tuntutan pembayaran sebagai kontrak pembinaan kerajaan memandangkan kontrak pembinaan kerajaan tersebut tidak merupakan satu kontrak dalam Jadual Pertama perintah pengeculian (lihat perenggan 33 & 35).

(4) Sama ada pengadil tersebut harus menggunakan dirinya kepada mana-mana daripada kuasa luas yang diberikan kepadanya, dibawah s 25 Akta, adalah satu perkara yang harus diserahkan kepada pengadil dalam menggunakan budi bicaranya dan mahkamah akan secara amnya mengelak dari campur tangan dalam satu permohonan untuk mengetepikan keputusan adjudikasi. Dia mungkin akan menggunakan mana-mana kuasa yang diberikan kepadanya dibawah s 25(a)–(p) sama ada secara sendiri atau campuran kuasa-kuasa lain. Ianya tidak wajib untuk pengadil menggunakan kesemua kuasanya yang diperuntukan dibawah s 25 Akta. Selaras dengan s 12(1) Akta, pengadil akan mengendalikan adjudikasi dalam cara yang mana pengadil berasa sesuai dalam semua kuasa yang diperuntukkan dibawah s 25 Akta (lihat perenggan 37–38).

(5) Kedua-dua pihak telah menyerahkan semua dokumen sokongan dan otoriti undang-undang yang relevan dalam posiding adjudikasi yang mana pengadil mempunyai peluang untuk meneliti. Pengadil bergantung kepada otoriti undang-undang untuk tiba dalam keputusannya termasuklah keputusan untuk membenarkan tuntutan Enra dan bahawa subkontrak tersebut bukan kontrak pembinaan kerajaan dikecualikan dari peruntukan Akta. Pengadil memutuskan bahawa ianya tidak perlu untuk menjalankan pendengaran lisan, mesyuarat dan/atau lawatan tapak untuk adjudikasi ini,apatah lagi apabila Gemula tidak menyerahkan apa-apa permohonan untuk pengadil untuk menjalankan satu pendengaran, mesyuarat dan/atau rawatan tapak dalam perjalanan prosiding adjudikasi. Fakta bahawa pengadil tidak memihak dengan Gemula bukan satu alasan untuk berhujah bahawa pengadil tidak bertindak secara adil atau saksama. Satu tuduhan yang serius sedemikian mesti mengandungi beberapa elemen ketepatan dan bukannya satu pengataan bersahaja, dia telah bertindak secara bebas dan saksama, keputusannya akan berbeza (lihat perenggan 39–42).

(6) Sama ada kerja variasi adalah sah merupakan satu dapatan fakta dan undang-undang pengadil. Keadilan asasi, tidak menetapkan bahawa pengadil harus tiba di satu keputusan dalam satu cara spesifik. Selagi mana pengadil telah mendengar kedua-dua pihak, dia tidak boleh dipersalahkan sebagai menafikan pihak yang dia buat keputusan yang tidak memihak kepadanya, telah membuat keputusan menentang keadilan asasi apabila secara asasnya, keadilan asasi adalah keadilan prosedural. Pemikiran pengadil adalah meyakinkan dan munasabah dan sememangnya bukan satu alasan untuk mengetepikan keputusannya dibawah alasan penafian keadilan asasi (lihat perenggan 55–63).]

Cases referred to

ACFM Engineering & Construction Sdn Bhd v Esstar Vision Sdn Bhd and another appeal [2016] MLJU 1776, CA (refd)

Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 449, FC (refd)

Bina Puri Construction Sdn Bhd v Hing Nyit Enterprise Sdn Bhd [2016] 7 MLJcon 119; [2015] MLJU 941, HC (refd)

Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd and another case [2017] 7 MLJ 732, HC (refd)

Mudajaya Corp Bhd v Leighton Contractors (M) Sdn Bhd [2015] 10 MLJ 745, HC (refd)

Sykt Pembangunan Setia Jaya v Peremba Construction Sdn Bhd & Anor [2012] MLJU 1768, HC (refd)

TYL Land and Development Sdn Bhd v SIS Integrated Sdn Bhd and another case [2018] MLJU 217, HC (refd)

Tan Eng Han Construction Sdn Bhd v Sistem Duta Sdn Bhd [2018] 12 MLJ 395, HC (refd)

Westwood Structural Services Ltd v Blyth Wood Park Management Company Ltd [2009] All ER (D) 80 (Jan); [2008] EWHC 3138, QBD (refd)

Wong Kim Wah (trading as 'Syarikat Binaraya') v The Government of the State of Pahang & Anor [2004] 7 MLJ 335, HC (refd)

Legislation referred to

Construction Industry Payment and Adjudication (Exemption Order) 2014 First Schedule

Construction Industry Payment and Adjudication Act 2012 ss 12(1), 15, 25, 28, 29, 40

Ashok Kumar Mahadev Ranai (Jocelyn Lim Yean Tse and Joanna Tan Li Pheng with him) (Skrine) in Originating Summons No WA-24C-222–10 of 2018 for the plaintiff

Tengku Saiful Hisyam (Normah bt Mohamad Desa with him) (Apandi Ali & Co) in Originating Summons No WA-24C-239–10 of 2018 for the plaintiff.

Tengku Saiful Hisyam (Normah bt Mohamad Desa with him) (Apandi Ali & Co) in Originating Summons No WA-24C-222–10 of 2018 for the defendant

Ashok Kumar Mahadev Ranai (Jocelyn Lim Yean Tse and Joanna Tan Li Pheng with him) (Skrine) in Originating Summons No WA-24C-239–10 of 2018 for the defendant.

Lee Swee Seng J:

[1] There were two originating summonses for this court's decision. One filed earlier by the successful claimant in an adjudication under the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA') was for enforcing the adjudication decision dated 6 September 2018 under s 28 of

A the CIPAA. As expected the respondent in the adjudication had applied subsequently to set aside the adjudication decision under s 15 of the CIPAA.

[2] The court had directed the two originating summonses to be heard together with the setting aside application to be heard first followed by the enforcement application. It goes without saying that if the setting aside application is allowed then the enforcement application would be dismissed. Correspondingly if the setting aside application is dismissed then the enforcement application would invariably be allowed.

C PROJECT

[3] Gemula Sdn Bhd ('Gemula') is the main contractor for a project known as the construction of a main vehicle 8x8 and team vehicle garage together with infrastructure at 10 mile camp in Kuantan, Pahang ('the project'). Jabatan Kerja Raya Pahang ('JKR') is the employer of the project under the main contract.

[4] Gemula appointed Enra Engineering and Fabrication Sdn Bhd ('Enra') as the subcontractor by a letter of award dated 15 January 2016 ('LOA 1') to supply and install steel structure for the project for the sum of RM6,202,002.76 ('LOA 1 sum').

[5] This was followed by a second letter of award dated 9 May 2016 ('LOA 2') appointing Enra to 'supply building materials and to complete all repair works for the project for the sum of RM RM9,658,668.80' ('LOA 2 sum'). Both the LOA 1 and the LOA 2 shall be referred collectively as the 'subcontract'.

[6] There were further contractual documents entered into between the parties in a deed of assignment dated 10 February 2016 ('DOA 1') and a second deed of assignment dated 27 May 2016 where Gemula (as the assignor) had irrevocably assigned to Enra (as the assignee) monies payable or due and payable by JKR to Gemula under the main contract. It was further provided in both the DOA 1 and DOA 2 that JKR had consented that Gemula shall do all that is necessary to ensure payment is made to Enra.

[7] As the project progressed disputes arose between the parties with respect to the payment for works done under the Subcontract.

[8] For consistency of reference and to avoid confusion in the identities of the parties if they were to be referred to as plaintiff and defendant as they were plaintiff in one application and defendant in another application, the parties

shall be referred as they were so referred to in the adjudication as claimant and respondent or sometimes as Enra and Gemula respectively.

PROCEEDINGS IN THE ADJUDICATION

[9] On 15 March 2018, the claimant issued a payment claim to the respondent setting out, in summary, the following claims:

Details	Amount (RM)
Total claims relating to LOA 1	7,358,542.98
Total claims relating to LOA 2	704,339.61
Total claims relating to additional/variation works ancillary to the Subcontracts	2,159,701.28
TOTAL CLAIM	10,222,583.87

[10] On 30 March 2018, the respondent served a payment response on the claimant. This was followed by the appointment of an adjudicator and the service of the adjudication claim, adjudication response and adjudication reply.

[11] The adjudicator made the following adjudication decision as follows:

(a) the respondent shall pay the sum of RM10,222,583.87 ('the adjudicated amount') to the claimant;

(b) the respondent shall pay interest at the rate of 5%pa on each invoice claimed by the claimant from its respective due date for payment until full and final settlement;

(c) the respondent shall pay the sum of RM62,289 as the costs of the adjudication; and

(d) the respondent shall pay the sum of RM70,305 as the legal costs incurred in the adjudication to the claimant.

PRAYERS

[12] The respondent had applied to set aside the adjudication decision principally on the ground that the adjudicator had exceeded his jurisdiction and that the he had failed to exercise his powers independently and impartiality. It was also alleged that there had been a denial of natural justice. The grounds are further amplified below:

(a) the adjudicator had acted in excess of his jurisdiction in that the subcontracts are government construction contracts specified in the First Schedule of the Exemption Order;

(b) the adjudicator failed to act independently or impartially in that the

A adjudicator had failed to exercise his power under s 25 of the CIPAA; and/or

(c) there had been a denial of natural justice and this court ought to evaluate and assess the facts and documents.

B PRINCIPLES

Whether the construction contract between the claimant and the respondent is an exempt contract under the First Schedule of the Exemption Order

C **[13]** The respondent alleged that the adjudicator acted in excess of his jurisdiction for allowing the claimant's claim even though the subcontracts ought to have been exempted from the application of the CIPAA as a government construction contract pursuant to s 40 of the CIPAA and the First D Schedule of the Construction Industry Payment and Adjudication (Exemption Order) 2014 ('the Exemption Order'). For a contract to be a 'government construction contract', first the government (federal or state government) has to be a contracting party. Learned counsel for the claimant referred to the case of *Mudajaya Corp Bhd v Leighton Contractors (M) Sdn Bhd* [2015] 10 MLJ 745 E ('Mudajaya'), a case where the plaintiff sought a declaratory order to the effect that the subcontract in question, of which the government was not a party to but was for works done in relation to national security, came within the terms of the Exemption Order.

F **[14]** In dismissing the plaintiff's application, the High Court decided that the subcontract was not a government construction contract because the government was not a party to the contract.

G **[15]** The reasoning of Justice Mary Lim J (now JCA) is as follows:

> [34] It is apparent from para 2 of the order that what is exempted here are first and foremost 'government construction contract'. The term 'government construction contract' is however, not defined; whether in the exemption order or anywhere in the Act. Nevertheless, it would be fair and reasonable to say that *in order to be a* H *'government construction contract', the contract must first of all be one where the government, be it the federal or any of the state government, is a party. Otherwise, it would be just like any other construction contract* and there would have been no need to cite or refer such a construction contract as a 'government construction contract' ...
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> I ...
>
> [36] ... *For a construction contract to fall within the meaning of and be considered as a 'government construction contract', it logically must be one where the government, federal or state, is a party to. Only then, it makes sense why the exemption order has referred to the phrase 'government construction contract' and not just construction*

contract. In fact, this is the plain meaning of the term 'government construction contract' used in exemption order ... A

...

[43] The instant application is for a declaratory order to the effect that the contract in question is exempted from the Act. *Bearing in mind the purpose of the CIPAA, and that as a starting position it is intended to cover all construction contracts including those entered into by the government, a more strict and narrow as opposed to a liberal and extensive interpretation ought to be applied when construing exemption provisions and exemption or exclusion orders*; unless there are clear express terms to the contrary. This approach and these principles accord with s 17A of the Interpretation Acts 1948 and 1967 (Act 388) on interpreting legislations purposively. B C

[44] *It is the view of this court that exemption clauses or orders must be read narrowly and restrictively having regard to the purpose, object and intent of the underlying substantive law which is the CIPAA ...* (Emphasis added.)

D

[16] Whilst it is undeniably true that the federal government is not a party to the subcontracts, there is a secondary sense in which if the principal contract further up the chain of contracts is that between the government and one of the parties, then the contracts lower down the chain of contracts may well qualify to enjoy the benefits of exemption that the principal contract enjoys. E

[17] The learned judge in *Mudajaya* also observed as follows as highlighted by learned counsel for the respondent:

[28] The focus of CIPAA is on the type of works; and this, in itself, is extensive as it ranges from and includes preparatory work, the sourcing of materials, equipment and manpower to the execution of the works by putting up the physical infrastructure to dismantling any of the same. The Act disregards the entities behind the contracts for those works and who in fact the contracting parties may be, up or down the contracting chain. F G

...

[38] But, that is not the case here. What we have instead is an exemption of a 'contract, matter or transaction or any class thereof' which is entered into by the government. The exemption applies only to particular and specific types of government construction contracts. The particular types of government construction contracts are those specified in the first and second schedules. And, even in respect of such contracts, it is only those contracts which fulfill the elements in any of the categories of contracts mentioned in the first and second schedules that are exempted. In the case of the first schedule government construction contracts, a full exemption; while in the case of the second schedule government construction contracts, a limited and prescribed conditional exemption. *Such exemption, if there is one in the first place, will be enjoyed by all involved along the contractual chain, regardless the identity of the contracting party.* (Emphasis added.) H I

[18] Though it was observed in obiter only and not the ratio of the case, yet I have no difficulty agreeing with the soundness of the proposition. It stands to reason that if the first contract in the pinnacle of the chain of contracts is an exempt contract within the First Schedule of the Exemption Order then the contracts down the chain should be similarly affected for otherwise there would be an anomaly and an aberration in that a party like a main contractor may not proceed against its employer because the exemption applies but that its subcontractor in the subcontract immediately below the first main contract may enjoy the benefits of adjudication. It would neither be fair nor reasonable.

[19] If the main contractor cannot avail itself of adjudication and its benefits of a quick resolution of its disputes and payments from its employer and yet has to submit to adjudication brought by its subcontractor and pay pursuant to the adjudication decision, the main contractor would be in an unenviable position where it has to pay out to its subcontractor even though its employer has not paid it.

[20] That cannot be the intention of the legislator and the exemption order has to be read in a way as to promote its intention without unnecessarily causing undue hardship to any party up the chain of construction contracts where the ultimate party is the government as the employer with respect to the exempt construction contracts.

[21] Therefore I was not persuaded by the claimant that merely because neither of the contracting parties are not the government, then invariably the construction contract in question cannot be an exempt contract even if ordinarily the contracts would be one by reference to the nature of the works as spelt out in the First Schedule to the Exemption Order. A far more important and relevant question would be whether the government contract in question comes within the First Schedule to the Exemption Order.

Whether the government contract is an exempt contract falling within the First Schedule to the Exemption Order

[22] Not every government construction contract is exempt from the CIPAA but only those falling within the Exemption Order. Thus a government contract for the construction of schools or stadium would not be exempt from the application of the CIPAA.

[23] Section 40 of the CIPAA wherein the Minister derives his authority to issue the Exemption Order reads as follows:

40 Exemption

The Minister may, upon considering the recommendation of the KLRCA, by order published in the Gazette, exempt — A

(a) Any person or class of persons; or

(b) *Any contract, matter or transaction or any class thereof*, from all or any of the provisions of this Act, subject to such terms and conditions as may be prescribed. (Emphasis added). B

The relevant parts of the Exemption Order reads:

2 Exemption C

(1) A Government construction contract as specified in the First Schedule is exempted from all provisions of the Act

...

FIRST SCHEDULE D

A contract for any constructions works —

...

...

(b) *that relates to national security or security related facilities* which includes the construction of *military* and police *facilities, military* bases and *camps*, prison and detention camps, power plant and water treatment plant. (Emphasis added.) E

[24] Here the subcontracts are not with respect to the construction of an army or military camp but a facility in the army or military camp. The question is whether that which was constructed relates to national security or security related facilities. Here the construction is confined to the construction of a garage and repair works related thereto. The only nexus to a natural security or security related facilities is that the garage is built within a military camp. A garage is nothing more than a place to store and park motor vehicles. Is such a nexus sufficient to bring the government contract within the exemption? I do not think so. F G

[25] I bear in mind the following principles when interpreting a piece of legislation and that would include subsidiary legislation as well as propounded in the Federal Court's decision in *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd* [2013] 1 MLJ 449 at p 458 as follows: H

On the proper application of the provision of the said s 17A of the Interpretation Act we would refer to the case of *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97 wherein this court had laid down the principles, inter alia, as follows: I

In summarising the principles governing the application of the purposive approach to interpretation, *Craies on Legislation* (8th Ed) says at p 566:

A

(1) *Legislation is always to be understood first in accordance with its plain meaning*.

(2) *Where the plain meaning is in doubt the courts will start the process of construction by attempting to discover, from the provisions enacted, the broad purpose of the legislation*.

B

(3) *Where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading*.

(4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.

C

(5) Where the courts conclude that the underlying purpose of the legislation is insufficiently plain, or cannot be advanced without any unacceptable degree of violence to the language used, they will be obliged, however regretfully in the circumstances of a particular case, to leave to the legislature the task of extending or modifying the legislation.

D

E

The choice prescribed in s 17A of '... a construction that would promote the purpose or object underlying the Act ... shall be preferred to a construction that would not promote that purpose or object ...' can only arise when the meaning of a statutory provision is not plain and is ambiguous. If therefore, the language of a provision is plain and unambiguous s 17A will have no application as the question of another meaning will not arise. 'Thus, it is only when a provision is capable of bearing two or more meanings can s 17A be resorted to in order to determine the one that will promote the purpose or object of the provision, such an exercise must be undertaken without doing any violence to the plain meaning of the provision. This is a legislative recognition of the purposive approach and is in line with the current trend in statutory interpretation ...'.

F

G

[26] Applying first the plain meaning approach, the 'garage and repair works' thereto is a facility within the military camp but not one related to national security or security related facilities. It is not unlike constructing a badminton court or a kitchen within an army or military camp.

H

[27] An exemption order has to be interpreted strictly in that if one is carving out an exception to and an exemption from the application of the CIPAA, then the contract is question must fall squarely and sit snugly within the words employed in carving out the exemption.

I

[28] There is no element of national security where a garage is concerned and the only nexus and a very tenuous one at that is that it happened to be in an army camp. Not everything that is built or constructed in a military camp

relates to national security or security related facilities. Of course if the contract is one in relation to the construction of a military base or camp then such a contract would be caught. However where the military base or camp is already there and the contract relates to a component of the military base or camp then one would have to look at the nexus in relation to national security and security based facilities.

[29] A garage being devoid of these elements the subcontracts in question cannot be said to be one coming within the Exemption Order.

[30] Even if it is arguable that the 'garage and repair works' may arguably be related to national security or security related facilities, any ambiguity has to be resolved in favour of an interpretation that would promote the purpose of the CIPAA. The purpose is captured in the long tile which is 'An Act to facilitate regular and timely payment, to provide a mechanism for speedy dispute resolution through adjudication, to provide remedies for the recovery of payment in the construction industry and to provide for connected and incidental matters'.

[31] Surely it cannot be suggested that non-payment for work done by contractors in a government construction contract is inimical to the interest of the government. In fact the very ability of the contractor to continue to completion the works is very much dependent on prompt and punctual payments of the progress claims by the government.

[32] It may be argued that buildings such as military camps and bases and prison and detention camps as well as power plant and water treatment plant are works that are related to national security and are security related facilities. The rationale seems to be that any delay in completion would affect national security and seeing that one of the remedies available to the contractor who has an adjudication decision in its favour is to suspend works or reduce the rate of progress of performance of the construction work under s 29 of the CIPAA, the whole project might be delayed to the detriment of the government.

[33] However here is a case where the works had been completed and the subcontractor is asking for payment. The element of national security does not arise in any acute sense and there is no good reason why the contract in question should not be treated like any other contracts, involving a component of a building works where if the contractor is not paid, he should be permitted to avail itself of adjudication.

[34] Any ambiguity should be resolved in favour of promoting the objectives of the CIPAA as captured in the long title above and prompt payment for work

done can only enhance corporate governance and accountability at all levels with the government taking the lead by example.

[35] The adjudicator was therefore within jurisdiction when he proceeded to adjudicate the payment claim as the government construction contract does not fall within the First Schedule of the Exemption Order.

Whether the adjudicator had failed to act independently and impartially

[36] The respondent alleged that the adjudicator was not independent and impartial for failing to exercise its powers under s 25 of the CIPAA. As summarised by learned counsel for the claimant, the respondent had relied on the following:

(a) the adjudicator failed to conduct a hearing, meeting or a site visit (para 20 of the respondent's affidavit in support);

(b) the adjudicator failed to take into account the facts and documents in relation to the construction contract including the relationship between the parties involved and the terms of the construction contract in its entirety (para 28(b) of the respondent's affidavit in support); and

(c) there was an alleged 'overlapping' of claims against the respondent and JKR from the claimant which the adjudicator failed to appreciate (para 44 of the respondent's affidavit in support).

[37] Whether or not the adjudicator should avail himself of any of the vast powers conferred on him in s 25 of the CIPAA is a matter best left to the adjudicator in the exercise of his discretion and the court would generally abstain from interfering or intervening in an application to set aside an adjudication decision.

[38] He may exercise any of the powers given him from s 25(a)–(p) either alone or in combination with other powers. It is not mandatory for the adjudicator to exercise all of his powers provided under s 25 of the CIPAA. Pursuant to s 12(1) of the CIPAA, the adjudicator shall conduct the adjudication in the manner as the adjudicator considers appropriate within the powers provided under s 25.

[39] I agree with the claimant that here both the parties had submitted all relevant supporting documents and relevant legal authorities in the adjudication proceedings of which the adjudicator has had the opportunity to peruse and examine.

[40] The adjudicator had relied on the relevant legal authorities in arriving at his decision which included his decision in allowing the claimant's claim and that the subcontracts are not government construction contracts exempted from the provisions of CIPAA.

[41] The adjudicator has decided that it is not necessary to convene an oral hearing, meeting and/or site visit for this adjudication at para 185 of the adjudication decision and more so when the respondent had not submitted any requests for the adjudicator to conduct a hearing, meeting and/or site visit during the course of the adjudication proceedings.

[42] The fact that the adjudicator had decided against the respondent is no justification for arguing that the adjudicator had not acted independently or impartially. An allegation as serious as this must descend to some elements of particularity and not a matter of saying that had he acted independently and impartially his decision would have been different.

[43] When the respondent applied to the adjudicator for an extension of time to serve their adjudication response, the adjudicator gave both sides a right to be heard and in spite of objection by the claimant, granted an extension of time for the respondent to serve their adjudication response.

[44] By way of an example, perhaps the respondent might have some basis for alleging biasness if he had granted to the claimant an extension of time but refused to grant a similar extension to the respondent under similar circumstances. That is not the case here.

[45] The respondent alleged that had the adjudicator considered the relevant documents impartially he would have arrived at the conclusion that the debt had been assigned absolutely to JKR and it is against JKR that the claim should be brought.

[46] Whether or not the terms of the DOA 1 and DOA 2 had been complied with by the respondent and whether there is any recourse that the claimant may have to the respondent in a case where JKR refused to pay is a matter of mixed question of fact and law and this court would not interfere because this is not an appeal. Being not an appeal this court is not at liberty to delve into the merits of the adjudicator's decision on a mixed question of fact and law.

[47] This is not a case where at this juncture I can say that the adjudicator was clearly and unequivocally wrong and indeed any consideration of that question must be at the arbitration or litigation that both the claimant and the

respondent are free to pursue for a decision that is final and binding and which would supersede the adjudication decision which has the element of interim finality only.

[48] The adjudicator had understood the DOA 1 and DOA 2 as providing only for security for direct payment from a third party ie the JKR in this case. It is only a mode of payment whereby JKR, would make direct payment to the claimant and the respondent is obliged to do all that is necessary to ensure payment is made to the claimant.

[49] JKR in their letter dated 31 July 2018 (exh I of the respondent's affidavit in support) to the claimant, at paras 4(i) and 5 of the said letter had stated as follows:

> 4(i) Pertikaian dan masalah-masalah yang timbul di antara kontrak yang timbul di antara kontrak pihak tuan dan kontraktor utama iaitu skop dan kerja tambahan seperti dinyatakan di Para 2 dan 3 surat pihak tuan bersama pihak kontraktor utama. *Kerajaan hanya bertanggungan membuat bayaran terus kepada pihak tuan berdasarkan DOA 1 dan DOA 2.*
>
> 5. ... Walau bagaimanapun, selaras dengan Klausa 8 Deed of Assignment No 1 dan 2, yang antara lain bermaksud 'sekiranya pada bayaran akhir kontrak, *tiada pembayaran atau bayaran yang diterima oleh pihak tuan selaku penerimahak adalah kurang berbanding nilai yang disubkontrak, nilai yang belum dibayar hendaklah dituntut dari penyerahhak iaitu kontraktor utama.* (Emphasis added.)

[50] As the government had taken the stand that there was no sums owing from them to the respondent, the claimant here had to sue the respondent for any debts due from the respondent for the additional and/or variation works in relation to the subcontracts.

[51] The mere fact that the claimant had JKR in the correspondence loop of the site meetings held where the claimant was present does not make JKR or the government a party to the contract between the respondent and the claimant.

[52] I agree with the claimant that like any other construction projects, this is merely to facilitate better communication and coordination among the relevant stakeholders of the project to ensure the project is completed successfully.

[53] Learned counsel for the claimant referred to the case of *Wong Kim Wah (trading as 'Syarikat Binaraya') v The Government of the State of Pahang & Anor* [2004] 7 MLJ 335 where the defendant/debtor entered into an agreement ('main contract') with the Phillipines Nation Construction Corporation ('the

third party/assignor') for the construction of a certain project. The third party sub-contracted a portion of the works to the plaintiff under the main-contract. The plaintiff claimed against the defendant based on a 'partial' assignment signed between the plaintiff and third party. In dismissing the plaintiff's application, the High Court held at paras 12–13 below:

> [12] References have also been made to *Keating on Building Contracts* (6th Ed), the paragraph of which is as follows:
>
> > A sub-contractor who has entered into a contract with the main contractor to which the employer is not a party *has no cause of action against the employer* for the price of work done or goods supplied under his contract unless he sues under a valid assignment.
>
> [13] The words 'unless he sues under a valid assignment' are the relevant words. *Treitel on the Law of Contract* (10th Ed) explained at p 626 that '*(a)n assignment is not itself a contract between assignor and debtor: its legal nature is that of a direction amounting to a transfer of a right. It could also be an instruction to the debtor to pay to the third party*'. (Emphasis added.)

[54] To venture further in delving into whether the adjudicator had rightly interpreted the scope and ambit of the DOAs at this setting aside stage would be tempting the court to convert this application into an appeal. This court must resist every temptation to do so and not succumb to it under the guise of the failure of the adjudicator to act impartially and independently.

Whether the ground of a denial of natural justice in the adjudication was in reality a challenge of the merits of the adjudication decision

[55] Whether or not the variation works are valid is a finding of mixed fact and law of the adjudicator. Natural justice does not mandate that the adjudicator must arrive at a decision in a particular way. So long as the adjudicator had heard both parties, he cannot be faulted as having denied the party that he decided against natural justice when after all natural justice is procedural fairness in essence.

[56] The asdjudicator had made a finding that the terms of the standard form contract between the government and the respondent does not bind the claimant and thus the requirements of prior instructions and written approvals are not mandatory for the claimant to claim for variation and/or additional works. See para 220 of the adjudication decision.

[57] The adjudicator further held at para 221 of his decision that based on the authority of *Sykt Pembangunan Setia Jaya v Peremba Construction Sdn Bhd & Anor* [2012] MLJU 1768 the formality of having a written variation order before payment can be made, can be waived if the contractor was led to

reasonably believe that the strict legal right will not be insisted on.

[58] The adjudicator had also made the following finding of facts as follows in the adjudication decision:

> 222. Similarly, in the present case, the claimant submitted a list of the proposed variation works under the subcontract to the respondent for the issuance of instructions, purchase and/or work orders. Upon receipt of the VO proposals, the respondent nonetheless refused to issue the instructions, purchase and/or work orders despite the claimant's repeated reminders.
>
> 223. It is obvious from the trail of evidence before me that the respondent was fully aware of the fact that the claimant was carrying out the variation and/or additional works and at no point in time did the respondent object to stop the claimant from carrying out and completing the same. For instance, the respondent in its letter addressed to JKR dated 21 April 2017 submitted variation orders to JKR based on the additional/or variation work done by the claimant for, inter alia, the supply and installation of bolts and nuts (Item No 5) and galvanised Steel purlin Works (Item No 7).
>
> ...
>
> 225. ... the respondent is estopped from relying on the procedural requirements in the standard form contract to deny the claimant compensation for costs expended towards the additional and/or variation works having led the claimant go reasonably believe that the procedural requirements have been waived.

[59] It would be opportune to remind ourselves of the dicta of the Court of Appeal in *ACFM Engineering & Construction Sdn Bhd v Esstar Vision Sdn Bhd and another appeal* [2016] MLJU 1776 with respect to what is meant by a denial of natural justice in the context of adjudication.

[60] The Court of Appeal dismissed the appellant's application to set aside a decision made by an adjudicator, and allowed the enforcement of the aforesaid decision, on the basis that the appellant's setting aside application was merely based on challenging the merits of the adjudication decision which was beyond the court's function. David Wong JCA (now CJ (Sabah and Sarawak)) held as follows:

> [20] *We also pointed out that there was no evidence that the appellant was prevented from tendering evidence or make submissions on issues raised in the adjudication* ...
>
> [21]... If we were to consider the complaints of the complaints of the appellant, we would be looking into the merits of the decision of the adjudicator. *In the context of s 15 of CIPPA 2012, it cannot be the function of the court to look into or review the merits of the case or to decide the facts of the case. The facts are for the adjudicator to assess and decide on. The court's function is simply to look at the manner at which the adjudicator conducted the hearing and whether he had committed an error of law during that process.* Such error of law relates to whether he had accorded procedural

fairness to the appellant. In the context of this case, the complaints of the appellant were nothing but *complaints of factual findings* of the adjudicator which in our view *cannot be entertained by us* ...

...

[24] This was simply a case where the losing party was not happy that it had obtained an unfavourable decision and tried its chance in the judicial system. *The law as it exists now correctly limits the court's functions which expressly do not include to review the correctness of the adjudicator's decision. As pointed by the learned judge, the court's intervention is only in very exceptional circumstances which are far and few in between. The prima facie view of the court must be to affirm the adjudicator's decision unless the losing party can show it had complied with the thresholds listed in s 15 of the CIPAA 2012.* (Emphasis added.)

[61] In *Bina Puri Construction Sdn Bhd v Hing Nyit Enterprise Sdn Bhd* [2016] 7 MLJcon 119; [2015] MLJU 941, the High Court dismissed the applicant's application to set aside the adjudication decision which was granted in favour of the claimant subcontractor in the adjudication proceedings. Ravinthran Paramaguru J observed as follows:

[9] ... It must be noted that under CIPAA, there is *no right of appeal against the decision of the adjudicator* which is interim in nature or of temporary finality only. Section 15 has provided limited grounds on which the decision of the adjudicator may be set aside. *Since an application under s 15 is not an appeal, the decision of the adjudicator cannot be reviewed on merits* ...

...

[12] ... As I said earlier, s 15 *does not envisage that the decision of the adjudication can be reviewed on its merits. Therefore, it is immaterial if the adjudicator had erred in his finding of facts*. The decision of an adjudicator is only of temporary finality pending final settlement of accounts. In the premises, unless there is a clear cut breach of natural justice or excess of jurisdiction, the court should be slow to set aside the decision of the adjudicator. (Emphasis added.)

[62] In *TYL Land and Development Sdn Bhd v SIS Integrated Sdn Bhd and another case* [2018] MLJU 217, the applicant applied to set aside the adjudication decision on, inter alia, the ground that the adjudicator failed to consider and appreciate certain findings of fact. This court held at paras [87] onwards as follows:

[87] Until then, for the scheme of statutory adjudication under CIPAA to work, *parties must respect and honour the decision made by the adjudicator, though it may be less than perfect* and a sort of rough justice where the refined version may be had only in litigation or arbitration.

[89] Appreciating that there would be a need to do some balancing of competing interests in the case of an adjudication decision which decision has the element and effect of interim finality, there is a broad discretion vested in the court under a s

16(1)(b) of the CIPAA to grant a stay of the decision pending litigation or arbitration or a stay subject to terms under s 16(2).

[90] The Federal Court in *View Esteem Sdn Bhd* would allow in cases 'where there has been clear and unequivocal errors'. to use the in hearing an application under s 16(1)(b) to grant a stay of an adjudication decision.

[91] The Federal Court nevertheless hastened to add that 'a stay of the (adjudication decision) ought not be given readily and caution must be exercised when doing so'. See para [82] of the said Federal Court's decision. At para [84] of the said judgment of the Federal Court it is stated that the 'financial capacity of the contractor to repay' could be a factor but not the only factor to be considered.

[92] For the reasons *given I would not disturb this finding of mixed fact and law as the adjudicator had answered the right question and had given his cogent reasons for arriving at his decision*. There is no breach of natural justice as in answering the question so raised the adjudicator had invariably disposed of the defence raised in the adjudication response that this Progress Claim No 7 (Rev 2) is only to be made at final account stage and rejected the same. (Emphasis added.)

[63] The reasonings of the adjudicator are both cogent and reasonable and certainly not a ground for setting aside his decision under the rubric of a denial of natural justice.

Whether the application to enforce the adjudication decision should be allowed

[64] As this court had dismissed all the grounds for setting aside the adjudication decision, correspondingly and consequently the application for enforcement for the adjudication decision should be allowed.

[65] This court is further satisfied that the adjudication decision delivered is in compliance with the requirements of the CIPAA with respect to the criteria mentioned in *Tan Eng Han Construction Sdn Bhd v Sistem Duta Sdn Bhd* [2018] 12 MLJ 395 as follows:

[38] ... the court upon being asked to enforce the adjudication decision would *ordinarily grant an order in terms of the application to enforce unless there is patent non-compliance with the requirements of the CIPAA* such as the following:

(a) that the dispute is not one within the core or original jurisdiction of the adjudicator;

(b) that the decision is a void decision under s 12(3) of the CIPAA being made outside the period specified in s 12(2);

(c) that the decision is not in writing and does not contain reasons for such decision under s 12(4) of the CIPAA; and

(d) that the decision has not determined the adjudicated amount and the time and manner the adjudicated amount is payable.

...

[43] The court's chief concern when presented with an enforcement application would be to ask *if the matter adjudicated upon is one falling within the core or original jurisdiction of the CIPAA*. It is within the core jurisdiction of the CIPAA if it is a matter falling with the application provision under s 2 and that it does not fall within the non-application provision under s 3 and further that it is not falling within the exemption provision under s 40 of the CIPAA and the Exemption Order made thereunder.

[66] Particularly in this case the government construction contract does not fall within the exemption in the Exemption Order for the reasons already give. Moreover there had not been any non-compliance with the above requirements set out in the CIPAA.

[67] In *Econpile (M) Sdn Bhd v IRDK Ventures Sdn Bhd and another case* [2017] 7 MLJ 732 at para 72 this court had referred to the English case of the UK Technology and Construction Court in *Westwood Structural Services Ltd v Blyth Wood Park Management Company Ltd* [2009] All ER (D) 80 (Jan); [2008] EWHC 3138 (TCC) which held that:

[13] The principles as to enforcement of adjudicators' decisions are well known. They can be summarised as follows:

(a) 'the objective which underlies the Act and the statutory scheme requires the *courts to respect and enforce the adjudicator's decision unless it is plain that the question which he has decided was not the question referred to him or the manner in which he has gone about his task is obviously unfair*. It should be only in *rare circumstances that the courts will interfere* with the decision of an adjudicator': see para 85 of the judgment of Chadwick LJ in *Carillion Construction Ltd v Devonport Royal Dockyard Ltd* [2005] EWCA Civ 1358; 104 ConLR 1; [2006] BLR 15. An *error of fact or law will not invalidate an adjudicator's decision.* If the adjudicator has answered the right question in the wrong way, his decision will nevertheless be binding. It is only if he has answered the wrong question that his decision will be a nullity: see the Court of Appeal decisions in *Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd* [2001] 1 All ER (Comm) 1041; 73 ConLR 135; [2000] BLR 522 and *C & B Scene Concept Design Ltd v Isobars Ltd* 2002 EWCA Civ 46; 82 ConLR 154; [2002] BLR 93. (Emphasis added.)

[68] In the light of the above considerations the adjudication decision must be allowed to be enforced.

A PRONOUNCEMENT

[69] In the upshot and for the reasons given above, I had dismissed the setting aside application with costs of RM15,000 to the claimant and I had allowed the enforcement application with costs of RM10,000 to the claimant.

B

Application allowed to enforce adjudication decision, dismissed application to set aside adjudication decision with costs.

Reported by Izzat Fauzan

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